

Federal Acquisition Regulation

6.304

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(c) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(d) As a minimum, each justification for a sole-source 8(a) contract over \$20 million shall include the following information:

(1) A description of the needs of the agency concerned for the matters covered by the contract.

(2) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract (see 19.805-1).

(3) A determination that the use of a sole-source contract is in the best interest of the agency concerned.

(4) A determination that the anticipated cost of the contract will be fair and reasonable.

(5) Such other matters as the head of the agency concerned shall specify for purposes of this section.

[50 FR 1729, Jan. 11, 1985, as amended at 50 FR 52433, Dec. 23, 1985; 60 FR 48236, Sept. 18, 1995; 66 FR 27412, May 16, 2001; 76 FR 14562, Mar. 16, 2011]

6.304 Approval of the justification.

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—

(1) For a proposed contract not exceeding \$650,000, the contracting officer's certification required by 6.303-2(b)(12) will serve as approval unless a higher approving level is established in agency procedures.

(2) For a proposed contract over \$650,000 but not exceeding \$12.5 million, by the competition advocate for the procuring activity designated pursuant to 6.501 or an official described in paragraph (a)(3) or (a)(4) of this section. This authority is not delegable.

(3) For a proposed contract over \$12.5 million, but not exceeding \$62.5 million, or, for DoD, NASA, and the Coast Guard, not exceeding \$85.5 million, by the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over \$62.5 million or, for DoD, NASA, and the Coast Guard, over \$85.5 million, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

(b) Any justification for a contract awarded under the authority of 6.302-7, regardless of dollar amount, shall be considered approved when the determination required by 6.302-7(c)(1) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with agency procedures. The approval level shall be determined by the estimated total value of the class.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

[50 FR 1729, Jan. 11, 1985, as amended at 50 FR 52433, Dec. 23, 1985; 54 FR 13023, Mar. 29, 1989; 55 FR 3881, Feb. 5, 1990; 55 FR 52790, Dec. 21, 1990; 60 FR 42654, 42665, Aug. 16, 1995; 61 FR 31618, June 20, 1996; 65 FR 24325, Apr. 25, 2000; 70 FR 11739, Mar. 9, 2005; 71 FR 57366, Sept. 28, 2006; 75 FR 53132, Aug. 30, 2010; 76 FR 14562, Mar. 16, 2011]

6.305 Availability of the justification.

(a) The agency shall make publicly available the justification required by 6.303–1 as required by 10 U.S.C. 2304(1) and 41 U.S.C. 253(j). Except for the circumstances in paragraphs (b) and (c) of this section, the justification shall be made publicly available within 14 days after contract award.

(b) In the case of a contract award permitted under 6.302–2, the justification shall be posted within 30 days after contract award.

(c) In the case of a brand name justification under 6.302–1(c), the justification shall be posted with the solicitation (see 5.102(a)(6)).

(d) The justifications shall be made publicly available—

(1) At the Government Point of Entry (GPE) *www.fedbizopps.gov*;

(2) On the website of the agency, which may provide access to the justifications by linking to the GPE; and

(3) Must remain posted for a minimum of 30 days.

(e) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether the justification, or portions

of it, are exempt from posting. Although the submitter notice process set out in EO 12600, entitled “Predisclosure Notification Procedures for Confidential Commercial Information,” does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data, before making the justification available for public inspection, redacted as necessary. This process must not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (a) through (c).

(f) The requirements of paragraphs (a) through (d) do not apply if posting the justification would disclose the executive agency’s needs and disclosure of such needs would compromise national security or create other security risks.

[75 FR 34276, June 16, 2010]

Subpart 6.4—Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2; and, when appropriate, under Subpart 6.3.

(a) *Sealed bids.* (See part 14 for procedures.) Contracting officers shall solicit sealed bids if—

(1) Time permits the solicitation, submission, and evaluation of sealed bids;

(2) The award will be made on the basis of price and other price-related factors;

(3) It is not necessary to conduct discussions with the responding offerors about their bids; and

(4) There is reasonable expectation of receiving more than one sealed bid.

(b) *Competitive proposals.* (See part 15 for procedures.)

(1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) above.